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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,746	08/19/2003	Sofia Hermansson	018798-168	3752

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EXAMINER
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HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	Application No. 10/642,746	Applicant(s) HERMANSSON ET AL.	
	Examiner Melanie J. Hand	Art Unit 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) ☐ All    b) ☐ Some \*    c) ☐ None of:
    - 1. ☐ Certified copies of the priority documents have been received.
    - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Restart Time Period***

Applicant timely notified the Office of a defect in the Office action mailed January 12, 2007. Accordingly, in compliance with MPEP §710.06, the time period for reply begins on the day of mailing of this Office action. This Office action replaces the Office action mailed January 12, 2007.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 11, 2006 has been entered.

### ***Response to Arguments***

Applicant's arguments filed September 11, 2006 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the prior art of Kotmatsu: Applicant argues that Examiner's interpretation of the prior art of Kotmatsu is incorrect. Examiner disagrees. Applicant is no doubt aware that the Office consistently interprets the phrase "at least one" in claim language as encompassing teachings where only one of that entity exists. Kotmatsu teaches a fixing tongue that extends only from the front end portion. Thus Kotmatsu anticipates claim 1. Furthermore, applicant's arguments regarding the fact that Kotmatsu is

Art Unit: 3761

intended mainly for women cannot take the place of factual evidence. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

With respect to applicant's arguments regarding the prior art of Fisher: In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the claimed liner stays with the genitals rather than moving with the claimed pad) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's argument with respect to claim 1 is also not persuasive as claim 1 claims a fastening system including at least one fixing tongue and the claimed pad "comprises" at least one fixing tongue. The phrase "including" with respect to claim language is open-ended claim language. The claimed pad is "fastened to the pair of underpants only by virtue of said fastening system". The fastening system includes at least one fixing tongue. Thus the fact that Fisher teaches additional fastening elements does not invalidate the device of Fisher as prior art, as the additional fasteners taught by Fisher together define a fastening system.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5-8, and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Komatsu et al. (JP 11-318985).

Art Unit: 3761

In regard to Claims 1-3, 5, and 7-8, Komatsu et al. disclose a disposable incontinence pad comprising an absorbent part 1 with a liquid-permeable upper layer 2, a lower backing layer 3, an absorbent body 1, and further comprising a fastening system 7/8/10 that includes a fixing tongue 7 extending only from the front end portion of the pad; the fixing tongue is an extension of the pad layers, includes a fastener 10 to be fixed to the outside of an pair of underpants, and can be folded around the waist of the pair of underpants (whole document). The pad 1 is fastened to the pair of underpants only by said fastening system 7/8/10.

In regard to Claim 6, the fastener may also be fixed to the inside of the pants during use (especially see Fig.1 and [0016]-[0017]).

In regard to Claim 12, the fixing tongue comprises a band of adhesive ([0016]-[0017]).

In regard to Claims 13 and 15, the pad comprises a second fixing tongue 8 comprising a second fastener 10; the fastener is arranged on the backing layer 3 (Figs., [0014]).

In regard to Claim 14, the fixing tongue 7 can be separated from the absorbent part 1 of the pad by cutting it with pair of scissors or similar device. It is further pointed out that the recitation "can be separated from the absorbent part of the incontinence pad" is considered to be functional language. It has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994). Therefore, the fixing tongue of Komatsu is fully capable of being separated from the absorbent pad.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher (US 5,290,270).

In regard to Claim 1, Fisher discloses an incontinence pad comprising an absorbent part having a lower backing layer 50, an absorbent body 54, and a fastening system having a fixing tongue 48 extending only from the front end portion of the pad (whole document). Fisher does not expressly disclose that the absorbent part has a liquid-permeable upper layer. However, it is known in the art to provide an absorbent body sandwiched between a liquid-permeable upper layer (topsheet) and a backing layer (backsheet). Thus, it would have been obvious to one of ordinary skill in the art to provide the absorbent part with an upper liquid permeable layer since it was known in the art to provide absorbent pads with a liquid permeable upper layer (topsheet). The pad 1 is fastened to the pair of underpants only by said fastening system.

In regard to Claims 2-6, the fixing tongue is an extension of the layers of the pad, includes at least one fastener 52 arranged to be fixed to the inside of a pair of underpants; the entire fixing tongue comes to lie inside the edges of the absorbent when the tongue is folded over (Figs. 4-5, column 3, line 51-column 4, line 55).

In regard to Claim 12, the fixing tongue comprises a band of adhesive (Figs. 4-5, column 3, line 51-column 4, line 55).

In regard to Claim 14, the fixing tongue 48 can be separated from the absorbent part 1 of the pad by cutting it with pair of scissors or similar device. It is further pointed out that the recitation "can be separated from the absorbent part of the incontinence pad" is considered to be functional language. It has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a

Art Unit: 3761

prior art satisfying the claimed structural limitations. *Ex parte Maham*, 2 USPQ2d 1647 (1987).

*In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

Claims 9-11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Komatsu et al. or Fisher.

In regard to Claim 9, Komatsu et al. and Fisher both disclose an adhesive fastener covered by a protective layer (11 and 58, respectively), but do not expressly disclose that the adhesive is a pressure sensitive adhesive. However, it is known in the art to use a pressure sensitive adhesive for attachment sanitary articles to the wearer's undergarments. Thus, it would have been obvious to one of ordinary skill in the art to select a pressure sensitive adhesive, since it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

In regard to Claim 10, Komatsu et al. and Fisher both disclose the claimed invention but do not expressly disclose that the backing layer is treated with a release agent. However, it is known in the art to treat the backing layers and release sheets of sanitary pads having adhesive so as to increase releasability. Thus, it would have been obvious to one of ordinary skill in the art to treat the backing layer with a release agent since it was known in the art to treat such layers with a release agent to increase releasability.

In regard to Claim 11, Komatsu et al. and Fisher both disclose the claimed invention but do not expressly disclose that the fastener is a hook and loop fastener with a protective cover connected to the backing layer. However, it would have been obvious to one of ordinary skill in the art to provide the fastener of Komatsu et al. as a hook and loop fastener since hook-and-loop fasteners and adhesive layers are art recognized equivalents for their use as attachment

Art Unit: 3761

fasteners and the selection of any of these known equivalents to attach a sanitary pad to an absorbent article would be within the level of ordinary skill in the art.

In regard to Claim 18, Komatsu et al. and Fisher both disclose the claimed invention but do not expressly disclose that the rear end portion of the pad includes pre-stressed elastic material configuring at least a portion of the pad into a bowl shape. However, it would have been obvious to one of ordinary skill in the art to modify the pad of Komatsu et al. or Fisher to provide pre-stressed elastic material since it is known with in the art to provide an absorbent article with pre-stressed elastic material in order to shape the article to better fit the wearer, as supported by Widlund et al. (US 5,366,452, column 1, lines 33-46) and Runeman et al. (column 2, lines 21-29).

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Komatsu et al. or Fisher in view of Morteze et al. (US 5,291,617).

In regard to Claims 16-17, Komatsu et al. and Fisher both disclose the claimed invention but do not expressly disclose that the absorbent part of the pad or the pad itself has a greatest extent in the traverse direction near the fixing tongue and a smallest extent located away from the fixing tongue. Morteze et al. disclose an absorbent pad 32 for a pair of underpants having a triangular shape, with the greatest extent in the traverse direction being located nearer the waist area than a smallest extent of the pad located away from the waist area (Figures). Morteze et al. disclose that positioning the a pad having a triangular shaper in this manner permits moisture to wicked upward away from the crotch and into an air exposed to more air, implicitly leading to a drier feeling for the wearer. One would have been motivated to modify the absorbent pads of either Komatsu et al. or Fisher to have a triangular shape, as taught by Morteze et al., since doing so would allow permit an increased sense of dryness to the wearer. Thus, it would have



Art Unit: 3761

been obvious to one of ordinary skill in the art to modify the absorbent pads of either Komatsu et al. or Fisher to have a greatest extent in the traverse direction near the fixing tongue and a smallest extent located away from the fixing tongue since doing so would allow permit an increased sense of dryness to the wearer.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

April 3, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

